

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Henry H. Jenkins

Examiner: C. Dexter
Art Unit: 3724

Serial No: 09/580,411

Filed: May 30, 2000

For: COMPENSATING BLISTER DIE CUTTER APPARATUS

9213 Chillicothe Rd.
Kirtland, OH 44094
August 18, 2004

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

(EV374927081US)

APPEAL BRIEF

Dear Sir:

REAL PARTY IN INTEREST

The real party in interest is Henry H. Jenkins, the named inventor.

RELATED APPEALS AND INTERFERENCES:

There are no other appeals or interferences which will directly affect or have a bearing on the Board's decision in this pending appeal. This application as originally filed was appealed to this Board contesting the Examiner's final rejection of Claim 1 under 35 USC 102(b) using the reference Carll (US 2,313,801). This Board affirmed the Examiner in a decision dated July 31, 2003. Applicant then filed this RCE case and amended claims 1 and 3. These claims have been finally rejected under 35 USC 103 as

unpatentable over the reference Carll (US 2,313,801) in view of the reference Berlin (US 3,048,069). Claim 2 has been allowed.

STATUS OF THE CLAIMS:

The status of Claims 1 and 3 which are under appeal and which are found in the attached appendix pursuant to 37 CFR Section 1.192(c)(9) is they have been finally rejected under 35 USC 103 as unpatentable over the reference of Carll (U.S. 2,313,801) in view of the reference Berlin (US 3,048,069).

STATUS OF AMENDMENTS

All amendments submitted during the prosecution have been entered and the claims as amended are found in the attached appendix. Claim 2 as filed was allowed.

SUMMARY OF THE INVENTION

The present invention solves a problem found in the art of making blisters from a sheet of polymeric material which blisters are conventionally formed as a spaced plurality on the sheet(Figures 1-3). The blisters are cut into individual blisters(Figures 4-5) from the sheet and are used to carry product as the blister is attached to a piece of substrate. The blisters as cut from the sheet have a bowl or dish shape with a rim or flange 24 extending 360 degrees around the opening to the dish shape. The flanges are glued to the substrate to hold the blisters in position on the substrate. This problem is discussed in the specification for example on pages 1, 3 and 4.

Graphically the problem and its solution are found in the drawings of Figures 1-7. Figures 1-3 illustrate a large sheet of polymeric material upon which blisters 22 have been

formed in a conventional molding process. As discussed in the specification , when the sheet of blisters of Figure 1 is formed, shrinkage occurs which is indeterminate in amount and also varies from batch to batch of the polymeric material . When the sheet of blisters is placed in a conventional cutting mechanism with fixed cutters and the shrinkage has been sufficient, the blisters as cut from the sheet may take the form as illustrated in Figures 6 and 7, with the perimeter of the cut blister being uneven. This uneven perimeter or flange is undesirable because it is not pleasing in appearance and does not lend itself to a reliable sealing surface to be attached to a substrate.

The present invention solves this problem by means of the adjustable die cutter mechanism shown generally in Figures 8 and 9 and in more detail in Figures 10-14. In Figures 8 and 9 there is illustrated for example six (6) blister die cutter units 34-39 mounted on base 31 and each are capable of movement in all directions on the base and relative to each other.

This movement is accommodated by that structure shown in detail in Figures 13 and 14. Adjustment members 70 extend through enlarged holes 70 in the top board 50, the backup plate 46 and the bottom board 44 and are threadably secured to the base 31. This permits the described movement within the limits of the tolerance between the holes 72 and the outside diameter of members 70.

The die cutter mechanism is used for example by taking the sheet of blisters illustrated in Figures 1-3 and inserting the blisters 22 into the openings 62 of the respective die cutter units 34-39 as illustrated in Figure 8. To the extent the blisters are

located inconsistent distances from each other because of the shrinkage discussed above the individual units 34-39 will shift relative to each other to the positions illustrated for example in Figure 9. This is permitted because of the above referred tolerance between members 70 which reside within the enlarged holes 72.

As a result when the press is closed which contains the die cutter mechanism of the present invention the individual blisters will be severed from the sheet with consistent or symmetrical flanges or perimeters.

ISSUE

Did the Examiner correctly reject Claims 1 and 3 under 35 USC 103(a) as unpatentable over Carll (US 2,313,801) in view of Berlin (US 3,048,069)?

In this rejection the Examiner stated as follows:

Carll discloses a die cutter apparatus with almost every structural limitation of the claimed invention but lacks a cavity in the support member (claim 1) or the top board (claim 3). However, the Examiner takes Official notice that such cavities are old and well known in the art and provide various known benefits including providing clearance for additional tooling (e.g. a stripper assembly) or to provide clearance for a workpiece to be cut. Berlin discloses one example of a support member/top board with such a cavity configuration. Specifically, Berlin teaches a support member (e.g. 22, 24) that contains a cavity (referred to as a recess, see column 2, lines 66-71, and shown in Figure 7) to accommodate a stripper assembly (it is noted that this support also carries a steel rule die). Therefore, it would have been obvious to one having ordinary skill in the art to provide a cavity in the support member/top board of Carll for the well known benefits including those described above.

GROUPING OF THE CLAIMS

In the rejection of Claims 1 and 3, applicant contends that these two (2) claims are

separately and distinctly patentable over the rejection. In the argument herein below applicant points out the separate patentability of the claims.

ARGUMENT

The issue in this case is the rejection of Claims 1 and 3 under 35 U.S.C. 103(a) as unpatentable over Carll (US 2,313,801) in view of Berlin (US 3,048,069). The issue here as gleaned from the Examiner's "Response to Arguments" (pg 3 of the action dated May 20, 2004) is that the Examiner either does not understand the amendments made to Claims 1 and 3 or that he does not agree that they patentably distinguish over the art. The Examiner points out that "how the die is moved is irrelevant". The Examiner also comments that "applicant's invention as disclosed in the present application, is no different whether it is adjusted by hand or moved by a blister, that is, there is no structural difference."

The Examiner chooses to ignore or not understand the specific limitations found in claim 1 which further defines the lost motion connection by causing it to function by reception of the blister into engagement with the cavity in the support member. In Claim 3 the difference in diameters of the vertical holes and the adjustment members is given more specific meaning by stating that the 360 degree movement is caused by reception of the blisters into and engagement with the cavities.

These limitations give further life and meaning to these claims which define the invention.

The Examiner's rejection of or the objection to the claims may be that the amendments made are functional. If it is application can only say there is nothing inherently wrong with the use of functional phrases in distinguishing a claim over prior art.

In the previous appeal of this case the Board agreed with the Examiner's contention that Carll's structure was fully responsive to applicant's claim which recited "lost motion connection." It is submitted Carll is not responsive to Claims 1 and 3 as amended which further define the lost motion connection. This further definition is that the movement is caused by reception of the blister into and engagement with the cavity in the support member.

The case of *In re Swinehart and Sfiligoj* decided by the Court of Customs and Patent Appeals (169 USPQ 226, 1971) held that there is nothing wrong with drafting a claim utilizing functional language. In this case the Court said:

We are convinced that there is no support, wither in the actual holdings of prior cases or in the statute, for the proposition put forward here, that "functional" language, in and of itself, renders a claim improper. We have also found no prior decision of this or any other court which may be said to hold that there is some other ground for objection to a claim on the basis of any language, "functional" or otherwise , beyond what is already sanctioned by the provisions of 35 USC 112.

See also the case of *In re Ludtke and Sloan* decided by the Court of Customs and Patent Appeals (169 USPQ 563, 1971). In the *Ludtke* case the CCPA directed it was incumbent on applicant, when challenged, to show that the device disclosed by the

reference does not actually possess the functional language of the claim.

The Examiner here has not so challenged applicant but if he had applicant would have pointed out that Carll does not respond to the claim language. A thorough examination of Carll reveals the die members 14 are manually moved into position by an operator who then may adjust the same by tightening the bolts 32. See particularly Carll page 2, column 2. There is no showing or suggestion in Carll that the die member is adjusted by reception of the blister into and in engagement with the cavities in the support members. There is nothing shown in the drawings of Carll that would accomplish this and clearly the problem Carll sought to solve is not the same problem solved by applicant.

The reference of Berlin (US 3,048,069) adds little or nothing to the Carll reference. Applicant submits there is no cavity in Berlin as called for in Applicant's claims and the Examiner has not pointed to a suggestion in either Berlin or Carll as to how they would be combined so the die in Carll would be moved or adjusted by the member to be cut coming into contact with the die. The combination rejection cannot be legitimately made by the two references.

Claims 1 and 3 are believed to be separately patentable. Claim 1 recites the lost motion connection which permits lateral movement upon reception of the blister into engagement with the cavity wherein Claim 3 accomplishes this with the difference in diameters of the holes and the adjustment members.

APPENDIX

The rejected Claims 1 and 3 are set forth in the attached appendix.

SUMMARY

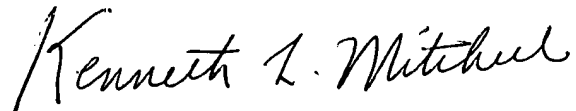
For the above referred to reasons discussed in detail under the Argument heading it is submitted the Examiner's final rejection of Claims 1 and 3 is incorrect and reversal is respectfully requested.

FEE

Please find enclosed check in the amount of \$165.00 for filing a brief in support of an appeal pursuant to 37 CFR Section 1.17(c). Please charge Woodling, Krost and Rust deposit account No. 23-3060 for any additional fees required. This brief is being filed in triplicate.

Respectfully submitted,

WOODLING, KROST and RUST

A handwritten signature in black ink that reads "Kenneth L. Mitchell". The signature is written in a cursive style with a large initial "K".

Kenneth L. Mitchell, Reg. No. 36,873
(440) 256-4150

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APPENDIX

1. A compensating blister die cutter apparatus for cutting individual blisters from a sheet containing a plurality of blisters including a base member, at least first and second blister die cutter units supported by said base member, each said blister die cutter unit comprising

a support member containing a cavity to receive a blister on the sheet and also carrying a steel rule die,

a lost motion connection connecting said support member to said base member permitting relative lateral movement of each die cutter unit relative to said base member and relative to each other through a range of 360 degrees upon reception of the blister into and engagement with the cavity in the support members.

3. A compensating blister die cutter apparatus for cutting blisters from a sheet including a base member, at least first and second blister die cutter units supported by said base

member, each said blister die cutter unit comprising a top board, a rule slot in said top board, a steel rule in said rule slot and having a cutting edge, a cavity formed in the central portion of said top board, vertical holes extending through said top board and having a diameter of a given dimension, adjustment member extending through said vertical holes and being connected to said base member, and said adjustment members having a smaller diameter than said given dimension permitting movement of said blister die cutter unit relative to said base member through a range of 360 degrees upon reception of the blisters into and engagement with the cavities.